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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,588	10/31/2003	Ezio Valdevit	112-0124US	1886
29855 7590 01/21/2009 WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P. 20333 SH 249 SUITE 600 HOUSTON, TX 77070			EXAMINER ADHAM MOHAMMAD SAJD	
			ART UNIT 2416	PAPER NUMBER
			MAIL DATE 01/21/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/699,588

**Applicant(s)**

VALDEVIT, EZIO

**Examiner**

MOHAMMAD S. ADHAMI

**Art Unit**

2416

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 19-25, 37-43, 55-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 8-18, 26-36, 44-54, 62-72 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

- Applicant's amendment filed 1/23/2008 is acknowledged.
- Claims 1,6,7,14,16,19,24,25,32,34,37,42,43,50,52,55,60,61,68, and 70 have been amended.
- Claims 73-82 have been cancelled.
- Claims 1-72 are pending.
- Applicant's response and amendment with respect to the rejection of claims 73-82 under 35 USC 101, rejection of claims 6,7,24,25,32,42,43,50,60,61,68,78, and 79 under 35 USC 112 2<sup>nd</sup> paragraph is noted and the rejection is withdrawn.
- Applicant's terminal disclaimer with respect to the double patenting rejection of claims 1-82 is noted and the rejection is withdrawn.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,19,37, and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Cometto (US 7,206,288).

**Re claims 1,19,37, and 55:**

Cometto discloses *a first and second node fibre channel device connected to a fabric* (Fig.1 ref.103 and 123 are node devices).

Cometto further discloses *a fibre channel fabric connected to the first and second node devices* (Fig.1 ref. 131).

Cometto further discloses *the fibre channel fabric including a first fibre channel switch and a second fibre channel switch coupled to the first switch* (Fig.1 ref. 101,111,113,115,117,119, 121 are coupled fibre channel switches).

Cometto further discloses *the first and second switch having previously determined all routes between all switches and all nodes in the fabric* (Col.1 lines 35-37 determining characteristics associated with routes in fibre channel networks and Col.6 lines 31-32 synchronization is maintained with other fibre channel switches).

Cometto further discloses *a plurality of ports configured to receive and transmit frames* (Col.6 lines 38-39 received at an input port. It should be noted that a fibre channel switch can have one or more input ports and Col.6 line 59 an output port is then selected).

Cometto further discloses *a fabric manager coupled to the ports to obtain the received frame and provide a frame to be transmitted* (Fig.1 where the fibre channel switches contain ports and Col.1 lines 50-51 the fibre channel frame is transmitted downstream toward the destination).

Cometto further discloses *the fabric manager configured to add information to the frame, the information including receive and transmit port identity and switch identity* (Col.6 lines 46-50 changing header information as well as adding information such as an input port number and a field uniquely identifying the switch and Col.7 lines 21-22 source and destination identifiers in the frames are swapped).

1. Claim 2-7,20-25,38-43, and 56-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cometto in view of Soumiya (US 6,671,257).

**Re claims 2-7,20-25,38-43, and 56-61:**

As discussed above, Perlman meets all the limitations of the parent claim.

Cometto further discloses *information including the link cost of a link* (Col.6 lines 53-55 the techniques of the present invention provide mechanisms for determining characteristics for transmission between many hops in a route between a source and the destination - where the determined characteristics are a "link cost").

Cometto does not explicitly disclose *the information including transmit and receive rates based on a first defined period and a second defined period that is greater than the first defined period and the number of frames and words transmitted and received*.

Soumiya discloses *the information including transmit and receive rates based on a first defined period and a second defined period that is greater than the first defined period and the number of frames and words transmitted and*

*received* (Fig.26 ref. 8~9 is a rate field, Col.26 lines 21-23 the rate changing unit may change the explicit rate that the rate calculating unit calculates at a predetermined ratio and Col.35 lines 21-36 the prolongment of the observation period means that an interval between ER calculation times becomes longer. The capability for calculating the ER in an observation period which is shorter than a specified observation period and Col.7 lines 27-28 "an arrived cell number counter for counting a number of arrived cells in correspondence with an output channel" where calculating the transmission rate also contains information about the amount of frames and words transmitted).

Cometto and Soumiya are analogous because they both pertain to network communications.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Cometto to include rate information as taught by Soumiya in order to more efficiently choose a path for transmission and to minimize congestion.

### ***Election/Restrictions***

3. Applicant's election with traverse of Group I, claims 1-7,19,25,37-43, and 55-61 in the reply filed on 6/23/2008 is acknowledged.

The traversal is on the ground(s) that the restriction occurs after an office action on merits and thus there is no search burden, improper nature of the requirement, and misclassification.

This is not found persuasive because a search burden exists because elements exist in each of the groups which require searches in areas not required for other groups. The initial search did not cover all the relevant search classes required.

Applicant contends the improper nature of the requirement because a sub-combination usable together in a single combination is improper when analyzing dependent claims against independent claims. The Examiner respectfully disagrees. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. See MPEP § 806.05(d). The Examiner cannot find in the cited section of the MPEP for a sub-combination usable together in a single combination where a distinction is made between dependent and independent claims.

Applicant contends the classification of groups II and group III are erroneous. The Examiner respectfully agrees; however, group II and group III are classified in different subclasses from the other groups (group II 370/389 and group III 370/351). Furthermore, groups I, IV, and V would require searches in different classifications.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 8-18, 26-36, 4-54, and 62-72 drawn to an invention nonelected with traverse in the reply filed on 6/23/2008. A complete

reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1,19,37, and 55 have been considered but are moot in view of the new ground(s) of rejection.
5. Applicant's arguments filed 1/23/2008 have been fully considered but they are not persuasive.

In the remarks, Applicant contends in Soumiya there is no data transfer rate measured.

The Examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., measuring a data transfer rate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD S. ADHAMI whose telephone number is (571)272-8615. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571)272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohammad S Adhami/  
Examiner, Art Unit 2416

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1/5/09